

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

EAST TENNESSEE NATURAL GAS)
CO.,) Case No. 4:02-CV-00146
Plaintiff,)
) **MEMORANDUM OPINION**
v.)
3.04 ACRES IN PATRICK COUNTY,) By: Jackson L. Kiser
JERRY S. THOMAS, et al.,) Senior United States District Judge
Defendants.)

Before me is the *Defendants' Motion for Reconsideration, or in the Alternative, Motion to Designate Order as Immediately Appealable*. For the reasons stated herein, I will deny the Defendants' *Motion*.

I. PROCEDURAL HISTORY

The Plaintiff East Tennessee Natural Gas ("Plaintiff") filed its *Complaint* in this case on December 6, 2002. A three day jury trial was held before this Court from October 10 through October 12, 2005. At the culmination of the trial, the jury returned a *Verdict* in which it determined that \$770,544 was the just compensation due the Defendants. *Judgment* was entered on the jury's *Verdict* by this Court on October 25, 2005. On November 3, 2005 the Plaintiff filed a *Motion for a New Trial or in the Alternative for Remittitur* with this Court. On January 24, 2006, this Court entered a *Memorandum Opinion and Order* ("Order") granting the Plaintiff's *Motion for a New Trial* and vacating the *Judgment*. On February 3, 2006, the Defendants filed a *Motion for Reconsideration, or in the Alternative, Motion to Designate Order as Immediately Appealable*. On February 16, 2006, the Plaintiff filed a *Response in Opposition to the*

Defendants' Motion. Oral argument on the Defendants' *Motion* would not be helpful. The Defendants' *Motion* is now ripe for judgment.

II. DISCUSSION

In their *Memorandum in Support*, the Defendants do not provide legal or factual grounds on which this Court should reconsider its *Order* that granted the Plaintiff's *Motion for a New Trial*. Furthermore, the Defendants do not raise new issues in their *Memorandum in Support*. The *Motion for Reconsideration* is not intended to be used by a party to merely re-argue a *Motion* on which the Court has already ruled.

The Defendants do cite 28 U.S.C. §1292(b) in requesting that this Court designate its *Order* as immediately appealable. This section of the *United States Code* allows the Court to declare an order immediately appealable under limited circumstances:

When a district judge, in making in a civil action and order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. . . 28 U.S.C. §1292(b).

In their *Memorandum in Support*, the Defendants do not raise a controlling issue of law for which there is substantial ground for a difference of opinion. Instead, the Defendants merely reargue the evidence they presented at trial in this case. In my opinion, the Defendants' appeal would be futile and would only delay this case.

III. CONCLUSION

For the reasons stated herein, I will deny the *Defendants' Motion for Reconsideration, or in the Alternative, Motion to Designate Order as Immediately Appealable*.

The clerk is directed to send a copy of this *Memorandum Opinion* and the

accompanying *Order* to all counsel of record.

Entered this 9th day of March, 2006.

s/Jackson L. Kiser

Senior United States District Judge